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Filing date: **05/25/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199443
Party	Defendant Kimaya USA, Inc.
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Date	05/25/2011
Attachments	Answer.pdf (8 pages)(317335 bytes) Exhibit1.pdf (11 pages)(464845 bytes) Exhibits2to6.pdf (9 pages)(3190162 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/916,216
for the mark BOMBSHELL
filing date: January 20, 2010
published for opposition in the Official Gazette
on April 12, 2011

----- X		
Bombshell Accessories, Inc.	:	
Opposer,	:	
	:	Opposition No. 91199443
v.	:	
	:	
Kimaya USA, Inc.	:	
Applicant	:	
----- X		

ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES

Kimaya USA, Inc. ("Applicant"), through its counsel, hereby answers the Notice of Opposition ("Opposition") of Bombshell Accessories, Inc. ("Opposer"), regarding Application Serial No. 77/916,216 (hereinafter the "Application"):

Applicant denies each and every allegation of the Opposition unless otherwise admitted or responded to as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph 1 of the Opposition, and therefore denies the same, and demands strict proof thereof.
2. Applicant admits the existence of the mark cited in this paragraph 2 of the Opposition, but is without further sufficient knowledge or information as to Opposer's ownership of same or Opposer's exclusive rights, title and interest in the cited mark, and demands strict proof thereof.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph 3 of the Opposition, and therefore denies the same, and demands strict proof thereof.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph 4 of the Opposition, and therefore denies the same, and demands strict proof thereof.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph 5 of the Opposition, and therefore denies the same, and demands strict proof thereof.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph 6 of the Opposition, and therefore denies the same, and demands strict proof thereof.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph 7 of the Opposition, and therefore denies the same, and demands strict proof thereof.
8. Applicant admits the existence of the trademark registration cited in this paragraph 8 of the Opposition, but is without further sufficient knowledge or information as to Opposer's ownership of same or Opposer's exclusive rights, title and interest in the cited mark, and demands strict proof thereof.
9. Admitted.
10. Applicant admits the existence of the trademark registration cited in this paragraph 10 of the Opposition, but is without further sufficient knowledge or information as to the validity of this trademark and/or Opposer's ownership of same or Opposer's exclusive rights to use the mark in commerce on or in connection with the goods in the cited registration, and demands strict proof thereof.

11. Applicant admits the allegations in the first sentence of this paragraph 11, but denies the allegations in the second sentence. Applicant filed an Amendment to Allege Use on December 10, 2010, stating first use of the mark BOMBSHELL on watches as of April 26, 2010.

12. Admitted.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph 13 of the Opposition, and therefore denies the same, and demands strict proof thereof.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

AFFIRMATIVE DEFENSES

By way of further answer, Applicant alleges the following affirmative defenses:

19. The Opposition fails to state a claim for relief.

20. The Opposer, Bombshell Accessories, Inc., originally filed a trademark application for the mark BOMBSHELL ACCESSORIES on August 20, 2004 (Serial No. 78/470,741) ("Opposer's Application") claiming an intent to use the mark on "body jewelry, costume jewelry, novelty jewelry, belts and accessories" for goods in Class 14. Opposer made no claim or intent to use the mark on watches or related goods.

21. The United States Trademark Office rejected the Opposer's Application in view of a pending application for the mark BOMBSHELL (Serial No. 78/392,986), filed by Amerex Group, LLC, for goods in Classes 9, 14, 18, 20 and 25. As is relevant to this present matter, the Class 14 goods in Amerex Group's BOMBSHELL application included "watches, pocket watches and clocks."
22. Opposer filed an Amendment dated September 21, 2005 (hereinafter referred to as the "BA Response") that the BOMBSHELL ACCESSORIES mark "is sufficiently different from the Cited Mark [BOMBSHELL] to avoid any likelihood of confusion." See Exhibit 1 hereto at pages 3-4.
23. Opposer stated at page 4 of the BA Response that although the word ACCESSORIES is disclaimed, "since a consumer is not aware of the existence of a disclaimer when he or she encounters a mark, 'it is well settled that the disclaimed material still forms a part of the mark and cannot be ignored in determining likelihood of confusion.'" *Giant Food, Inc. v. Nation's Foodservice, Inc.* 710 F.2d 1565, 1570 (Fed. Cir. 1983)(citations omitted)
24. In the BA Response, Opposer provided additional statements that Opposer's mark BOMBSHELL ACCESSORIES does not look or sound like the BOMBSHELL mark and that "the connotation and commercial impression established by BOMBSHELL ACCESSORIES is not similar to the commercial impression created by BOMBSHELL" See Exhibit 1 at page 7.
25. In the BA Response, Opposer expressly stated that there is "no likelihood of confusion between the jewelry items covered by [BA's Bombshell Accessories] mark and the watches, eyewear and clothing items covered by the [BOMBSHELL] mark." See Exhibit 1 at pages 8-10. In the most relevant section the Opposer stated the following:

Based on the foregoing, there is no likelihood of confusion between the jewelry items covered by Applicant's [Bombshell Accessories] Mark and the watches, eyewear and clothing items covered by the Cited Mark. While watches, eyewear and clothing serve a purely functional purpose (telling time, enabling the user to see, and providing coverage, respectively), the jewelry covered by Applicant's Mark [Bombshell Accessories] serve no such purpose, and are purely for ornamental purposes. Revlon, Inc. v. Jerell, Inc., 713 F.Supp. 93, 98 (S.D.N.Y. 1989)(no likelihood of confusion between cosmetics and wearing apparel since the goods "do not serve common functions, are not competitive and do not share any physical attributes at all, and are not inherently comparable"); General Shoe

Corp. v. Forstner Chain Corp., 113 F.2d 127 (C.C.P.A. 1940)(no confusion likely between similar marks as applied to footwear and jewelry). See page 9.

26. As evidenced by the record in the United States Trademark Office and restated above in paragraphs 19-25, Opposer by their own admission acknowledges their mark in its entirety is BOMBSHELL ACCESSORIES.
27. As evidenced by the record in the United States Trademark Office and restated above in paragraphs 19-25 Opposer by their own admission acknowledges there is no likelihood of confusion with the mark BOMBSHELL as applied to watches.
28. Applicant is using its BOMBSHELL mark as applied to watches including watch bands and watch bezels and not to any jewelry related products. Applicant maintains a website www.simplybombshell.com for selling BOMBSHELL watches to consumers which retail between \$39.99 to \$150.
29. Upon information and belief, Opposer maintains a website www.bombshellaccessories.com where its goods are advertised ("Opposer's Website") for sale to wholesalers. Opposer's Website home page includes a link to "Collections" (see Exhibit 2), which when clicked provide the user at least twenty five (25) collection options to chose from including a "Bombshell Collection" (see Exhibit 3). Opposer's online "Bombshell Collection" includes only four pieces of jewelry (see Exhibit 4).
30. Opposer's Website home page includes a link to Online Retailers (see Exhibit 2). As indicated on the Opposer's Website and upon information and belief, "The Angry, Young& Poor" (see Exhibit 5) and "Maria's Accessories" (see Exhibit 6) appear to be representative customer's of the Opposer. Maria's Accessories homepage indicates they are "authorized dealers of the Metal Mafia" jewelry line not a "Bombshell Accessories" jewelry line.
31. Upon information and belief, the BOMBSHELL ACCESSORIES mark appears to be used only as source indicator representing the company name rather than as a trademark applied to the respective jewelry goods.
32. Upon information and belief the goods identified in Opposer's trademark registration have differing channels of trade than the goods identified in Applicant's application since Opposer's body, novelty and costume jewelry goods appear to be sold only to wholesalers, whereas, Applicant's watches are sold directly to consumers.

33. Upon information and belief, neither the Opposer nor the Applicant have experienced any actual confusion through their respective uses of the marks at issue.
34. Applicant's one word BOMBSHELL mark and Opposer's two word BOMBSHELL ACCESSORIES mark are different in appearance, and by Opposer's own admission must be viewed in its entirety (see paragraphs 23 and 26 herein).
35. The watch goods offered under Applicant's mark as stated in the Application are distinguishable from the body, costume and novelty jewelry goods offered under Opposer's registered mark. Opposer's body, novelty and costume jewelry goods identified in Opposer's trademark registration relate to low priced wholesale jewelry, which are distinct from Applicant's watch goods which retail from \$39.99 to \$150.00.
36. Upon information and belief, the purchasers of Applicant's BOMBSHELL watches are different and distinct from the "Angry, Young & Poor" targeted market of the Opposer's body, costume and novelty jewelry.
37. Applicant's BOMBSHELL mark is not confusingly similar to Opposer's BOMBSHELL ACCESSORIES mark.
38. Applicant's watch goods and the body, costume and novelty jewelry sold by Opposer under its BOMBSHELL ACCESSORIES mark is not identical or closely related.
39. Upon information and belief, the conditions surrounding the marketing of Applicant's watch goods and the body, costume and novelty jewelry sold by Opposer under its BOMBSHELL ACCESSORIES mark are not such that they would be encountered by the same purchasers and would not give rise to the purchasers that the goods come from a common source.
40. Upon information and belief, the Opposer will not be damaged by the registration of Applicant's BOMBSHELL mark and would not be likely to cause confusion or mistake or to deceive consumers as to the affiliation, connection or association of Applicant with Opposer as to the origin, sponsorship and approval of Applicant's goods.

WHEREFORE, Applicant respectfully requests that the Opposition be denied, that attorneys' fees be awarded to Applicant, that this action be dismissed with prejudice and the Application Serial No. 77/916,216 be forwarded for issuance as a registration.

This 25th day of May 2011.

Respectfully submitted,

By: 

Dara L. Onofrio
Attorney for Applicant
Kimaya USA, Inc.

Onofrio Law
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CERTIFICATE OF SERVICE

The undersigned attorney for Applicant hereby certifies that she served by first class mail, postage prepaid, a copy of the foregoing:

NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES

Upon Opposer's attorneys, namely

James J. Saul
Stephanie A. Gumm
Baker & Daniels LLP
311 South Wacker Drive
Suite 4400
Chicago, Illinois 60606
Email: inteas@bakerd.com;
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This May 25, 2011



Dara L. Onofrio

EXHIBIT 1

SN 78/470741
Law Office 113
Dawn Han

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bombshell Accessories, Inc.

Serial No. : 78/470741

Filed : August 20, 2004

Mark : BOMBSHELL ACCESSORIES

Examining
Attorney : Dawn Han

Law Office : 113

FedEx TRK # 7917 3495 8480

Date of Deposit: September 21, 2005

I hereby certify that this paper or fee is being deposited with
FedEx Express, Standard Overnight service, on the date indicated
above and is addressed to Trademark Assistance Center, James
Madison Building, East Wing, 600 Dulany Street, Alexandria, VA
22314

Jo-Ann Cupito

RESPONSE TO OFFICE ACTION

Trademark Assistance Center
James Madison Building, East Wing
600 Dulany Street
Alexandria, VA 22314-0001

Dear Commissioner:

This is in response to the Office Action of March 23, 2005 which (1) advised that the Office may reject Applicant's Mark BOMBSHELL ACCESSORIES under Trademark Act § 2(d), 15 U.S.C. § 1052(d) based on the mark contained in Serial No. 78/392,986 for the mark BOMBSHELL covering eyewear, namely, sunglasses in International Class 9; watches, pocket watches and clocks in International Class 14; luggage and all purpose carrying bags, pack frames, pack bags, backpacks, fanny packs and hydration packs in International Class 18; tent parts and accessories, namely, non-metal tent poles and tent flies, foam pads and outdoor sleeping bags in International Class 20; and footwear, socks, parkas, ponchos, pants, underwear, down vests, sweaters, hoods and raincoats, jackets, vests, t-shirts, swimsuits, shirts, shorts, hats, caps, gloves, mittens, scarves in



International Class 25 (the "Cited Mark"); (2) required that "belts and accessories" be removed from this Class 14 application and identified with more particularity; and (3) required disclaimer of the word ACCESSORIES.

Applicant first resolves the informalities of points 2 and 3 above by (i) deleting "belts and accessories" from this application; and (ii) adding the disclaimer required by the Examining Attorney. Applicant then puts forth its arguments that its application for the composite mark BOMBSHELL ACCESSORIES as applied to jewelry goods in Class 14 is not likely to be confused with the Cited Mark.

Applicant's arguments submitted below are intended to stand on their own, but Applicant further brings to the Examining Attorney's attention that the Cited Mark was itself initially rejected based on both a Registration and a pending application each for the mark BOMBSHELL, as applied to vehicle parts and bicycle hubs, respectively. In response, the owner of the Cited Mark argued against a likelihood of confusion between its mark as applied to its goods, and the marks cited the Patent and Trademark Office, which argument was accepted by the Examining Attorney in that case. A copy of the subject Response is attached hereto as Exhibit A.

Applicant here believes that the owner of the Cited Mark was correct that there was no likelihood of confusion despite the identical mark, and similarly believes that its goods are equally distinguishable such that there should be no likelihood of confusion, especially considering that the marks here are not identical, and are themselves distinguishable.

I. AMENDMENT

(1) Please amend Applicant's goods to remove the words "belts and accessories" so that the identification of goods reads as follows:

body jewelry, costume jewelry, novelty jewelry,
in International Class 14

(2) Applicant disclaims the word METAL apart from the mark as shown.

II. APPLICANT'S MARK IS NOT LIKELY TO BE
CONFUSED WITH THE CITED MARK

Applicant responds herein to the Examining Attorney's advice that there may be a likelihood of confusion between Applicant's Mark and, which may result in refusal to register Applicant's Mark should this application mature into a registration.

It is respectfully submitted that Applicant's Mark is sufficiently different from the Cited Mark to avoid any likelihood of confusion.

A. Applicant's Mark Is Not Confusingly Similar To the Cited Mark

The two part test to determine whether there is a likelihood of confusion between marks was set forth in *In re DuPont de Nemours & Co., Inc.*, 476 F.2d 1357 (C.C.P.A. 1977). The test first looks at the marks themselves for similarities in appearance, sound, connotation and commercial impression (this is commonly referred to as the "Sight, Sound, and Meaning" test), and second, requires that the Examining Attorney compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion is likely.

In determining whether a mark is likely to be confused with another, the marks must be considered in their entirety and not judged by their individual components.

Rodeo Collection v. West Seventh, 812 F.2d 1215, 1218 (9th Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157 (Fed. Cir. 1986); *Sears Mortgage Corp. v. Northeast Savings F.A.*, 24 U.S.P.Q.2d 1227 (T.T.A.B. 1992); *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (C.C.P.A. 1981).

Use of identical, even dominant words in common does not automatically mean that two marks are confusingly similar. See *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 627 (8th Cir. 1987), citing *Freedom Sav. & Loan Ass'n v. Way*, 757 F.2d 1176, 1183 (1st Cir. 1985). In the words of the prominent trademark scholar J. McCarthy:

under the overall impression analysis, there is no rule that confusion is automatically likely if a junior user has a mark which contains in part the whole of another's mark.

J. McCarthy, *Trademarks and Unfair Competition* § 23:41 at 91 (4th Ed). For example, the Court of Customs and Patent Appeals reversed the Trademark Trial and Appeal Board's refusal to register applicant's mark TIC TAC based upon a prior registration for TIC TAC TOE. The Court held that "the Board has made too much of the indisputable fact that TIC TAC is two thirds of TIC TAC TOE." *In re Ferrero*, 479 F.2d 1395, 1397 (C.C.P.A. 1973).

Although Applicant's Mark disclaims the word ACCESSORIES, since a consumer is not aware of the existence of a disclaimer when he or she encounters a mark, "it is well settled that the disclaimed material still forms a part of the mark and cannot be ignored in determining likelihood of confusion." *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570 (Fed. Cir. 1983) (citations omitted).

Due to the differences in the sight, sound and commercial impression between Applicant's Mark and the Cited Mark, as well as consumer sophistication, it is submitted that confusion as to the source of origin is not likely.

B. Applicant's Mark is Not Similar in Appearance to the Cited Mark

In applying the first tier of the "sight, sound and meaning" test, it is submitted that Applicant's Mark BOMBSHELL ACCESSORIES does not look like the Cited Mark. While the Cited Mark consist solely of the word BOMBSHELL, Applicant's Mark contains the additional, multi-lettered word ACCESSORIES. See *In re Hearst Corp.*, 982 F.2d 493 (Fed. Cir. 1993) (VARGA GIRL and VARGAS were sufficiently distinct visually to avoid a likelihood of confusion); *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 1402 (C.C.P.A. 1970) (PEAK PERIOD does not look like PEAK); *First Sav. Bank, F.S.B. v. First Bank System, Inc.*, 101 F.3d 645, 653 (10th Cir. 1996) (FIRSTBANK and FIRST BANK SYSTEM have "apparent visual differences").

Accordingly, due to the differences in appearances between Applicant's Mark and the Cited Mark, there is no likelihood of confusion.

C. Applicant's Mark is Not Similar in Sound to the Cited Mark

Applicant's Mark BOMBSHELL ACCESSORIES is phonetically different from the Cited Mark. In *Bell Lab. Inc. v. Colonial Prods. Inc.*, 644 F. Supp. 542 (S.D. Fla. 1986), the District Court stated that one issue, in comparing two marks, is whether the "aural characteristics [are] easily distinguishable, such that confusing similarity was unlikely." *Id.* at 546. The Court stated that:

[t]he question is whether the pronunciation of the sound [of the challenged mark] generates an auditory response that calls to mind or may be confused with the sound [of the Cited Mark].

Id. (the Court found that FINAL FLIP does not sound like FINAL, for similar pest control products). *See also Echo Drain v. Newsted*, 307 F. Supp.2d 1116, 1126 (C.D. Cal. 2003) (no likelihood of confusion between “Echo Drain” and “Echobrain,” in part “[b]ecause ‘brain’ and ‘Drain’ are different words and are phonetically different, [and therefore] the two marks also sound different.”).

After examining the aural characteristics of Applicant’s Mark, on the one hand, and the Cited Mark on the other, one must conclude that the marks are phonetically different. Applicant’s Mark contains the additional multi-syllabic ACCESSORIES element which makes this mark much longer-sounding than the Cited Mark, thus readily distinguishing the Marks.

D. The Connotation and Commercial Impression
of the Marks are Different

Confusion will not be found if the marks at issue create different commercial impressions. *See Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1375 (Fed. Cir. 1998) (“CRISTAL” for champagne and “CRYSTAL CREEK” for wine “evoked very different images in the minds of relevant consumers: while the former suggested the clarity of the wine within the bottle or the glass of which the bottle itself was made, the latter suggested “a very clear (and hence probably remote from civilization) creek or stream.”).

Indeed, this rule has been applied even when the marks at issue are identical and the goods/services are closely related. *See Taj Mahal Enterprises, Ltd. v. Trump*, 745 F. Supp. 240, 248 (D. N.J. 1990) (no likelihood of confusion between TAJ MAHAL for an Indian restaurant and TAJ MAHAL for a casino-hotel since, in the context of a restaurant, TAJ MAHAL “may simply be indicative of Indian cuisine and a general Indian motif” whereas, as applied to a casino hotel, “TAJ MAHAL may indicate grandeur, opulence and extravagance.”).

Applicant submits that the connotation and commercial impression established by its Mark is not similar to the commercial impression created by the Cited Mark.

As applied to Applicant’s goods, the word BOMBSHELL is clearly used to mean “stunning” or “amazing” (*see Merriam-Webster’s Collegiate Dictionary* (10th Ed. 1996)). Use of the word ACCESSORIES emphasizes the purely decorative function of Applicant’s jewelry (*see Id.*, defining “accessory” as “an object not essential in and of itself”).

In contrast, use of the word BOMBSHELL in connection with the camping equipment and the luggage covered by the Cited Mark appears to refer to the definition of “one that is devastating”, and suggests that by using the sturdy camping equipment and luggage covered by the Mark, a user will be protected from the elements, and thus be able to avoid even “devastating” conditions. Use of the Cited Mark in connection with the other items covered by the application, such as watches, clocks and clothing, which are presumably items used in association with and to promote the camping equipment and luggage sold under this Mark, convey a similar message regarding the sturdiness of the products.

Based on the foregoing, the commercial impression of Applicant's Mark, on the one hand, and the Cited Mark on the other, are distinguishable.

E. Confusion is Not Likely Between Applicant's Mark and the Cited Mark Since The Goods Are Distinguishable

1. No Likelihood Of Confusion With Respect To Watches, Clocks, Eyewear and Clothing

Courts and the Board have repeatedly refused to find likelihood of confusion merely because both marks are used in the same broad field. *See, e.g., W.W.W. Pharmaceutical Co., Inc. v. Gillette Co.*, 984 F.2d 567, 574 (2d Cir. 1993) (no likelihood of confusion between lip balm on the one hand and deodorant and antiperspirant on the other, notwithstanding the fact that all of the goods could be considered personal care products); *Thane International Inc. v. Trek Bicycle Corp.*, 53 U.S.P.Q.2d 1523 (D.D.C. 1999) (no likelihood of confusion between similar mark as applied to defendant's bicycles and bicycle-related equipment and plaintiff's device, designed to simulate walking or jogging, despite the fact that both parties used their mark in connection with exercise equipment).

For example, both Courts and the Board have found no likelihood of confusion where similar marks are applied to different types of clothing. *See A & H Sportswear Co. v. Victoria's Secret Stores, Inc.*, 926 F. Supp. 1233, 1264 (E.D. Pa. 1996), *aff'd*, 49 U.S.P.Q.2d (BNA) 1493 (3d Cir. 1999) (no likelihood of confusion between use of similar marks on swim wear and bras, despite the fact that the goods "frequently resemble each other," since the "overall functions of a bra and swimwear are distinct."); *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854 (T.T.A.B. 1984) (no likelihood of confusion

between similar marks for men's underwear and shoes); *McGregor Doniger, Inc. v. Drizzle, Inc.*, 446 F. Supp. 160, 164 (S.D.N.Y. 1978), *aff'd*, 599 F.2d 1126 (2d Cir. 1979) (holding that although the parties' goods "might both be crudely classified as outerwear", plaintiff's jackets and defendant's raincoats were sufficiently distinct to avoid confusion).

Similarly, both Courts and the Board have found no likelihood of confusion where similar marks are applied to different types of food products. *See Safe T Pacific Co. v. Nabisco, Inc.*, 204 U.S.P.Q. 307, 316 (T.T.A.B. 1979) (no likelihood of confusion between KRAZY GLAZY for toaster pastries and CRAZY for ice cream cups and cones, notwithstanding the fact that both items could be classified as sweets, since the goods covered under the marks are "specifically different items of merchandise."); *In re Mars, Inc.*, 741 F.2d 395, 222 U.S.P.Q. 938 (Fed. Cir. 1984) (use of CANYON for fresh fruits on the one hand and candy bars on the other not likely to cause confusion); *Hi Country Foods Corp. v. Hi Country Beef Jerky*, 4 U.S.P.Q.2d 1169 (T.T.A.B. 1987) (no likelihood of confusion between same mark for beef jerky and apple juice).

Based on the foregoing, there is no likelihood of confusion between the jewelry items covered by Applicant's Mark and the watches, eyewear and clothing items covered by the Cited Mark. While watches, eyewear and clothing serve a purely functional purpose (telling time, enabling the user to see, and providing coverage, respectfully), the jewelry covered by Applicant's Mark serve no such purpose, and are purely for ornamental purposes. *Revlon, Inc. v. Jerell, Inc.*, 713 F. Supp. 93, 98 (S.D.N.Y. 1989) (no likelihood of confusion between cosmetics and wearing apparel since the goods "do not serve common functions, are not competitive, do not share any physical attributes at all,

and are not inherently comparable”); *General Shoe Corp. v. Forstner Chain Corp.*, 113 F.2d 127 (C.C.P.A. 1940) (no confusion likely between similar marks as applied to footwear and jewelry).

2. No Likelihood of Confusion With Respect to
Camping Equipment and Luggage

Applicant's goods bear even less resemblance to the luggage and tent equipment covered under the Cited Mark and therefore, there is no likelihood of confusion. *Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Center*, 109 F.3d 275, 282 (6th Cir. 1997) (“If the goods and services are totally unrelated, confusion is unlikely”); *Harlem Wizards Entertainment Basketball, Inc. v. NBA Properties, Inc.*, 952 F. Supp. 1084 (D. N.J. 1997) (same).

F. Consumer Sophistication Weighs Against A Finding Of Confusion

Likelihood of confusion is not found where the purchasers of the goods or services at issue are sophisticated. *M & G Electronics Sales Corp. v. Sony Kabushiki Kaisha*, 250 F. Supp.2d 91, 104 (E.D.N.Y. 2003); *Pignons S.A. de Mecanique Pignons S.A. de Precision v. Polaroid Corp.*, 657 F.2d 482, 489 (1st Cir. 1981). Courts have found that consumers of some of the goods covered by the Cited Marks - clothing - are sophisticated. See *McGregor-Doninger*, 599 F.2d at 1137-1138 (holding that trial court did not abuse its discretion in deciding that purchasers of women's sportswear were sophisticated and knowledgeable); *Sally Gee, Inc. v. Myra Hogan, Inc.*, 699 F.2d 621, 626 (2nd Cir. 1983) (holding that “discerning consumers of women's apparel are unlikely to have blurred

vision causing them to see 'Sally Gee' upon viewing a 'Sally Lee' label."). Due to their technical nature, consumers of tent equipment would also likely be sophisticated.

Based on the foregoing, it is respectfully submitted that there is no likelihood of confusion between Applicant's Mark and the Cited Marks.

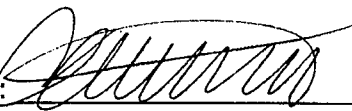
III. CONCLUSION

Applicant has amended its identification of goods to remove belts which would be classified in Class 25 or the accessories which would be classified in other classes, and demonstrated that there is no likelihood of confusion between its Mark and the Mark cited by the Examining Attorney. In view of the foregoing, Applicant respectfully requests that the Examining Attorney pass Applicant's Mark to publication.


Respectfully submitted

AMSTER, ROTHSTEIN & EBENSTEIN LLP
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Dated: New York, NY
September 21, 2005

By: 

Chester Rothstein
Holly Pekowsky



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GRAY FLOWER ON A GOLD NECKLACE WITH MULTIPLE CHAINS
Price Unavailable

bestsellers

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2. MINI BRASS KNUCKLE NECKLACES
3. CZ BLING 3 FINGER RING
4. BIG BRASS KNUCKLE NECKLACE
5. LARGE ADJUSTABLE PYRAMID...
6. BRASS KNUCKLE NECKLACE WITH...
7. DEATH BEFORE DISHONOR HEART...
8. HEART NECKLACE WITH BRASS...
9. MULTI CHAINED



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Paint Splatter Bracelets

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New Products For May




FUR BRACELET WITH STUDS
Price Unavailable



FEATHER FLOWER NECKLACE WITH DANGLING GEMS
Price Unavailable



GRAY FLOWER ON A GOLD NECKLACE WITH MULTIPLE CHAINS
Price Unavailable



SNAKE MULTIPLE CHAIN NECKLACE WITH PEARLS
Price Unavailable

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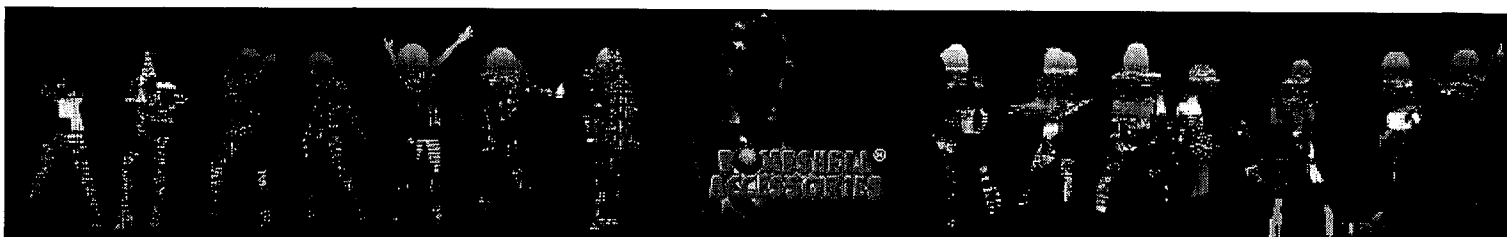
New Products [more]



GRAY FLOWER ON A GOLD NECKLACE WITH MULTIPLE CHAINS
Price Unavailable

Bestsellers

- BRASS KNUCKLE EAR STUDS**
- MINI BRASS KNUCKLE NECKLACES**
- CZ BLING 3 FINGER RING**
- BIG BRASS KNUCKLE NECKLACE**
- LARGE ADJUSTABLE PYRAMID...**
- BRASS KNUCKLE NECKLACE WITH...**
- DEATH BEFORE DISHONOR HEART...**
- HEART NECKLACE WITH BRASS...**
- MULTI CHAINED**


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Bombshell Collection

Sort by:

Displaying 1 to 4 (of 4 products)



BRONZE FLOWER NECKLACE WITH GUNMETAL CHAIN

BOMBSHELL EXCLUSIVE
 BRONZE FLOWER NECKLACE
 WITH GUNMETAL CHAIN.
 CHECK OUT MORE BOMBSHELL
 COSTUME JEWELRY. ALL
 JEWELRY IS LEAD FREE AND
 FULLY...

INO070106-1
 Price Unavailable

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SILVER VINTAGE KEY NECKLACE

TRENDY SILVER VINTAGE KEY
 NECKLACE WITH DESIGNS.
 CLICK HERE FOR MORE
 COSTUME JEWELRY. ALL
 METALS USED ON OUR
 PRODUCTS ARE LEAD FREE.
 ITEM NUMBER...

INO070106-4
 Price Unavailable

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Displaying 1 to 4 (of 4 products)



ETCHED METAL CIRCLE BRACELET

ETCHED METAL CIRCLE
 BRACELET. CLICK HERE FOR
 MORE COSTUME JEWELRY. ALL
 METALS USED ON OUR
 PRODUCTS ARE LEAD FREE.
 ALL JEWELRY IS LEAD FREE
 AND...

CLSB0017
 Price Unavailable

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REVERSIBLE MIRROR / CROWN NECKLACE

GOLD TRENDY YET REVERSIBLE
 MIRROR / CROWN NECKLACE
 CLICK HERE FOR MORE
 COSTUME JEWELRY. ALL
 METALS USED ON OUR
 PRODUCTS ARE LEAD FREE.
 ITEM...

INO070106-3
 Price Unavailable

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GRAY FLOWER ON A GOLD NECKLACE WITH MULTIPLE CHAINS

Price Unavailable

Bestsellers

1. **BRONZE FLOWER NECKLACE WITH...**
2. **ETCHED METAL CIRCLE BRACELET**
3. **SILVER VINTAGE KEY NECKLACE**
4. **REVERSIBLE MIRROR / CROWN...**

Reviews [more]

There are currently no product reviews.

Specials [more]

Throwback Jewelry
Wired Up
Swimsuit Jewelry



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**FACETED RED BUTTON
EARRING**
Price Unavailable

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FREE UPS GROUND SHIPPING ON ALL ORDERS
OVER \$100 FOR U.S. CUSTOMERS!

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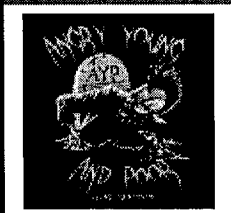
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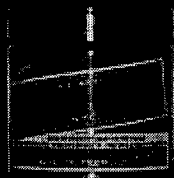
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Featured Products



Manic Panic CREAM dye- Electric Tiger Lily (Glow Under Black Light!) (Comes with FREE bottle of shampoo!)
Price \$9.99

This brand new Manic Panic® Hair Color is slightly more yellow than Electric Lava.

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[Add To Cart](#)



Off!- Compared To What? 7"
Price \$4.99

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Sex Pistols- Kiss This (Bulldog) on a yellow shirt

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Price \$14.99

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Charlie 50's Dress by Hell Bunny

Price \$43.99

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Kicker- Broke 7" (Dystopia, Neurosis, Filth)

Price \$5.99

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Bar Room Bliss Jersey Tunic Mini Dress/Top by Lucky 13

Price \$30.00

~~List Price: \$35.00~~

You Save: \$5.00

[More Details](#)



Bela's Dead Bandeau Bikini BOTTOM by Iron Fist

Price \$21.00

~~List Price: \$24.00~~

You Save: \$3.00

[More Details](#)

Dwarves- Born Again LP & DVD (Comes With FREE Limited Edition Poster Of The Cover!)



Price \$17.25

[More Details](#)

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Specials



****Glamour Guts
[Girls Skinny Jean by
Iron Fist - SALE](#)



****Monster
[Fuschia Cut Up Back
Shirt by Folter -
SALE](#)



****Revenge
[Norman Jacket by
Sailor Jerry - SALE](#)

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New Arrivals



Spastic
[Panthers/Teenage
Rampage- Split 7"](#)



[Cannomen- Sex On
The Bleach 7"](#)



[Shirks- Cry Cry Cry
7"](#)

[More New Arrivals >>](#)

Best Sellers



[5/8" Hex Spike](#)



[1/2" Cone Studs-
100 pack](#)



[3/4" Large Cone
Spike](#)

[More Best Sellers >>](#)

Angry, Young and Poor 356 West Orange St. Lancaster, PA 17603 Phone: (717)397-6116 email: ayp@angryyoungandpoor.com

Maria's Accessories

Body Jewelry & More...

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PINK CUPCAKE CAPTIVE BEAD RING

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Reviews [more]



I ordered these in 4 gauge. They are perfect size for my lob ..



Bestsellers

1. BLACK SEGMENT / SEAMLESS RINGS
2. Black Threaded tunnels earlets /...
3. DOUBLE FLARE TUNNELS...
4. STEEL SEGMENT / SEAMLESS RINGS
5. **STEEL THREADED GEM TUNNEL WITH...**
6. **PRESSED SET SINGLE FLARE CLEAR GEM...**
7. **BLACK THREADED TUNNEL CLEAR...**
8. **SINGLE FLARE TUNNELS...**
9. **STEEL STRAIGHT TAPERS 10G-00G**
10. **OPAL DOUBLE FLARE PLUGS**

New Products For May



PINK CUPCAKE CAPTIVE BEAD RING
\$6.50



GEM BUTTERFLY BELLY RING
\$12.99



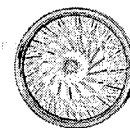
2" BLACK GEM HEART NECKLACE
\$13.99



JASMINE CUT LAVENDER GEM TUNNELS



HANDCUFF CAPTIVE BEAD RING
\$6.50



FANCY CONCAVE SPIRAL CUT GEM TUNNEL



ZEBRA JASPER STONE PLUGS



DANGLING BELLY RING WITH ROUND AND DIAMOND GEMS
\$14.99



CLEAR GEM ABSTRACT DESIGN BELLY RING
\$15.99

Specials [more]



MINI GUN CHARM NECKLACE

EXHIBIT 6 p2

16G TRAGUS BARBELLS
\$9.99



CELTIC KNOT TWIST WITH GEM
BELLY RING
\$12.99



BLACK WOOD TUNNEL WITH
CROCODILE WOOD STAY INLAY

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